

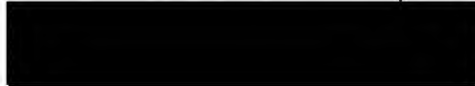
**These charges are only allegations which
may be contested by the licensee in an
Administrative hearing.**

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
JOSEPH MICHAEL POBER, M.D.

NOTICE
OF
HEARING

TO: JOSEPH MICHAEL POBER, M.D.



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on June 15, 2018 at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, New York, New York 10007 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses

and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.


Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the

Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW
YORK STATE BE REVOKED OR SUSPENDED, AND/OR
THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS
SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATED: April 27, 2018
New York, New York



HENRY WEINTRAUB
Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007
Tel. No. 212-417-4450

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

JOSEPH MICHAEL POBER, M.D.

STATEMENT

OF

CHARGES

JOSEPH MICHAEL POBER, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 7, 1980 by the issuance of license number 144489 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about and between April 2008 and January 2011 the Respondent, a plastic surgeon, performed multiple procedures on Patient A, including but not limited to excisional biopsies on Patient A's head, neck, torso and extremities. Patient A, a 25-year-old male at the onset of treatment, and the other patients in the Statement of Charges are identified in the attached Appendix.

1. On or about the dates below, Respondent knowingly and falsely represented on insurance claims that he utilized skin pedicle flaps for wound closure of excisional biopsies. Respondent intended to deceive.
 - a. January 23, 2009.
 - b. February 20, 2009.
 - c. June 16, 2009.
 - d. June 16, 2009.
 - e. July 23, 2009.
 - f. October 2, 2009.
 - g. November 20, 2009.

- h. November 20, 2009.
 - i. December 21, 2009.
 - j. December 28, 2009.
 - k. January 11, 2010.
 - l. February 2, 2010.
 - m. February 15, 2010.
 - n. March 15, 2010.
 - o. March 29, 2010.
 - p. April 12, 2010.
 - q. April 26, 2010.
 - r. June 8, 2010.
 - s. July 20, 2010.
 - t. July 26, 2010.
 - u. November 8, 2010.
 - v. November 15, 2010.
 - w. December 8, 2010.
 - x. December 15, 2010.
 - y. January 3, 2011.
- 2. Alternatively, Respondent deviated from medically accepted standards, if, in fact, he utilized skin pedicle flaps for wound closure of excisional biopsies.
 - 3. On or about February 16, 2011, Respondent inappropriately advised Patient A that he faced significant risk of melanoma for which he recommended a series of further excisional biopsies.
 - a. By so doing, Respondent exercised undue influence on a patient in such a manner as to exploit Patient A or a third party for financial gain.
 - 4. Respondent inappropriately prescribed Percocet and Vicodin on or about and between May 18, 2010 and January 19, 2011.

B. On or about and between July 3, 2012 and September 6, 2016, Respondent performed multiple procedures on Patient B, a 48-year-old female at the onset of

treatment, including but not limited to excisional biopsies on Patient B's head, neck, torso and extremities.

1. On or about the dates below, Respondent knowingly and falsely represented on insurance claims that he utilized skin pedicle flaps for wound closure of excisional biopsies. Respondent intended to deceive.
 - a. July 3, 2012.
 - b. July 24, 2012.
 - c. July 25, 2012.
 - d. August 1, 2012.
 - e. August 28, 2012 (two claims).
 - f. August 29, 2012.
 - g. September 5, 2012.
 - h. September 12, 2012
 - i. September 25, 2012 (three claims).
 - j. September 26, 2012.
 - k. October 9, 2012.
 - l. December 31, 2012 (two claims).
 - m. February 6, 2013.
 - n. February 12, 2013
 - o. February 22, 2013.
 - p. February 27, 2013.
 - q. March 5, 2013. (two claims).
 - r. March 13, 2013.
 - s. March 16, 2013. (three claims)
 - t. March 17, 2013.
 - u. March 20, 2013.
 - v. March 21, 2013.
 - w. March 22, 2013.
 - x. March 27, 2013.
 - y. April 1, 2013.

- z. April 2, 2013.
 - aa. April 9, 2013 (two claims)
 - bb. April 17, 2013 (two claims).
 - cc. April 24, 2013 (two claims).
 - dd. May 1, 2013.
 - ee. May 8, 2013.
 - ff. May 28, 2013 (five claims).
 - gg. June 13, 2013 (two claims).
 - hh. June 18, 2013.
 - ii. June 26, 2013 (two claims).
 - jj. July 3, 2013.
 - kk. July 23, 2013.
 - ll. July 24, 2013.
 - mm. August 13, 2013.
 - nn. August 20, 2013.
 - oo. September 3, 2013 (two claims).
 - pp. September 23, 2013.
 - qq. September 24, 2013
 - rr. November 26, 2013 (three claims).
 - i. December 30, 2013 (two claims).
 - ss. January 20, 2014.
 - tt. January 15, 2014 (two claims).
 - uu. January 20, 2014
 - vv. September 2, 2014.
2. Alternatively, Respondent deviated from medically accepted standards, if, in fact, he utilized skin pedicle flaps for wound closure of excisional biopsies.
 3. Respondent ordered excessive treatment not warranted by the condition of Patient B, with respect to multiple excisional biopsies performed on or about and between July 3, 2012 and through December 2016.

4. Respondent re-excised scars from excisional biopsies within an unacceptably short period of time between the initial excision and the re-excision.
- C. In or about and between March 2014 and January 30, 2015, the Respondent performed plastic surgery procedures on Patient C, a 47- year-old female, including multiple excisional biopsies.
1. On or about the dates below, Respondent knowingly and falsely represented on insurance claims that he utilized skin pedicle flaps for wound closure of excisional biopsies. Respondent intended to deceive.
 - a. April 21, 2014. (three claims).
 - b. April 22, 2014.
 - c. April 29, 2014 (three claims).
 - d. September 24, 2014.
 - e. September 30, 2014 (two claims)
 - f. October 6, 2014. (five claims).
 - g. January 1, 2015
 - h. January 26, 2015 (three claims).
 - i. January 30, 2015 (three claims).
 2. Alternatively, Respondent deviated from medically accepted standards, if, in fact, he utilized skin pedicle flaps for wound closure of excisional biopsies.
 3. Respondent failed to make available to the Department of Health upon written request a complete copy of Respondent's medical record for Patient C from May 2014 to the end of treatment. The Office of Professional Medical Conduct requested the medical record in a letter dated March 10, 2017.
 4. In a letter dated July 7, 2017, Respondent's attorney represented that Dr. Pober had not treated Patient C from May 2014 to the present "...so there are no updated medical or billing records ..." Respondent knowingly and falsely represented, through his agent/attorney, that he had not treated Patient C after May 2014, when, in fact, Respondent performed and billed for multiple procedures through January 2015. Respondent intended to deceive.

5. Alternatively, Respondent knowingly and falsely represented on Group Health Incorporated ("GHI") insurance claims that he performed multiple procedures, including wound closures with skin pedicle flaps, when, in fact, he had not performed the procedures. Respondent intended to deceive.
- D. On or about and between April 16, 2014, and August 26, 2014, the Respondent performed a variety of plastic surgery procedures on Patient D, a 46-year-old male, including multiple excisional biopsies.
1. On or about the dates below, Respondent knowingly and falsely represented on insurance claims that he utilized skin pedicle flaps for wound closure of excisional biopsies. Respondent intended to deceive.
 - a. June 4, 2014 (two claims).
 - b. July 17, 2014
 - c. August 25, 2014.
 - d. August 26, 2014 (two claims).
 2. Alternatively, Respondent deviated from medically accepted standards, if, in fact, he utilized skin pedicle flaps for wound closure of excisional biopsies.
 3. Respondent failed to make available to the Department of Health upon written request a complete copy of Respondent's medical record for Patient D from May 2014 to the end of treatment. The Office of Professional Medical Conduct requested the medical record in a letter dated March 10, 2017.
 4. In a letter dated July 7, 2017, Respondent's attorney represented that Dr. Pober had not treated Patient D from May 2014 to the present "...so there are no updated medical or billing records ..." Respondent knowingly and falsely represented, through his agent/attorney, that he had not treated Patient D after May 2014, when, in fact, Respondent performed and billed for multiple procedures through August 26, 2014. Respondent intended to deceive.
 5. Alternatively, Respondent knowingly and falsely represented on Group Health Incorporated ("GHI") insurance claims that he performed multiple procedures, including wound closures with skin pedicle flaps, when, in fact, he had not performed the procedures. Respondent intended to deceive.

E. Respondent concealed, with intent to deceive, that he was the subject of a professional misconduct investigation on multiple applications for the reappointment to the medical staff of Saint Luke's Roosevelt Medical Center that he signed on the dates below:

1. September 15, 2012.
2. August 8, 2013.
3. September 22, 2015.

SPECIFICATION OF CHARGES
FIRST THROUGH ELEVENTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. A, A1 and/or A1(a) through A1(y).
2. B, B1 and/or B1(a) through B1(vv).
3. C, C1 and/or C1(a) through C1(i).
4. C3.
5. C4.
6. D, D1 and/or D1(a) through D1(e).
7. D3.
8. D4.
9. E and E1.
10. E and E2.
11. E and E3.

TWELFTH THROUGH TWENTY-SECOND SPECIFICATIONS

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

12. A, A1 and/or A1(a) through A1(y).
13. B, B1 and/or B1(a) through B1(vv).
14. C, C1 and/or C1(a) through C1(i).
15. C4.
16. C5.
17. D, D1 and/or D1(a) through D1(e).
18. D4.
19. D5.
20. E and E1.
21. E and E2.
22. E and E3.

TWENTY-THIRD THROUGH THIRTIETH SPECIFICATIONS

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of

- 23. A and A2.
- 24. A and A 3.
- 25. A and A4.
- 26. B and B2.
- 27. B and B3.
- 28. B and B4.
- 29. C and C2.
- 30. D and D2.

THIRTY-FIRST THROUGH THIRTY-EIGHTH SPECIFICATIONS

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of:

- 31. A and A2.

- 32. A and A3.
- 33. A and A4.
- 34. B and B2.
- 35. B and B3.
- 36. B and B4.
- 37. C and C2.
- 38. D and D2.

THIRTY-NINTH SPECIFICATION

EXERCISING UNDUE INFLUENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(17) by exercising undue influence on the patient in such manner as to exploit the patient for the financial gain of the licensee or of a third party, as alleged in the facts of:

- 39. A, A3 and A3 (a).

FORTIETH SPECIFICATION

ORDERING EXCESSIVE TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(35) by ordering excessive treatment not warranted by the condition of the patient, as alleged in the facts of:

40. B and B3.

FORTY-FIRST THROUGH FORTY-SECOND SPECIFICATIONS

FAILING TO COMPLY WITH RECORD REQUESTS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(28) by failing to respond to a written communication from the Department of Health to make available relevant records, as alleged in the facts of:

41. C and C3.

42. D and D3.


FORTY-THIRD SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

43. A, A1(a)-A1(y), A3(a) A(4), B, B1(a)-B1(vv), B3, C, C1(a)-C1(i), C4, C5, D, D1(a)-D1(e), D4, D5, E1, E2 and/or E3.

DATE: April 27, 2018
New York, New York



Henry Weintraub
Counsel
Bureau of Professional Medical Conduct